Group 7

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
01	NH	AUBURN ROAD LANDFILL	LONDONDERRY	E
03	WV	FIKE CHEMICAL, INC.	NITRO	V
05	OH	LASKIN/POPLAR OIL CO.	JEFFERSON TOWNSHIP	R E
05	OH	OLD MILL	ROCK CREEK	R
07	KS	JOHNS' SLUDGE POND	WICHITA	V E
02	NJ	SWOPE OIL & CHEMICAL CO.	PENNSAUKEN	D
01	ME	WINTHROP LANDFILL	WINTHROP	R
06	AR	CECIL LINDSEY	NEWPORT	D
05	OH	ZANESVILLE WELL FIELD	ZANESVILLE	D
05	MI	GRAND TRAVERSE OVERALL SUPPLY CO.	GREILICKVILLE	D
05	MN	SOUTH ANDOVER SITE	ANDOVER	D
05	MI	KENTWOOD LANDFILL	KENTWOOD	R
05	IN	MARION (BRAGG) DUMP	MARION	D
05	OH	PRISTINE, INC.	READING	E
05	OH	BUCKEYE RECLAMATION	ST. CLAIRSVILLE	D
06	TX	BIO-ECOLOGY SYSTEMS, INC.	GRAND PRAIRIE	R
01	VT	OLD SPRINGFIELD LANDFILL	SPRINGFIELD	D
02	NY	SOLVENT SAVERS	LINCKLAEN	E
03	VA	U.S. TITANIUM	PINEY RIVER	E
05	IL	GALESBURG/KOPPERS	GALESBURG	D
02	NY	BOOKER - HYDE PARK	NIAGARA FALLS	V E
05	MI	SCA INDEPENDENT LANDFILL	MUSKEGON HEIGHTS	E
09	CA	MGM BRAKES	CLOVERDALE	E
05	MI	DUELL & GARDNER LANDFILL	DALTON TOWNSHIP	R
02	NJ	ELLIS PROPERTY	EVESHAM TOWNSHIP	R
04	KY	DISTLER FARM	JEFFERSON COUNTY	R
10	WA	HARBOR ISLAND LEAD	SEATTLE	D
05	OH	E.H. SCHILLING LANDFILL	HAMILTON TOWNSHIP	D
05	MI	CLIFF/DOW DUMP	MARQUETTE	E D
06	NM	HOMESTAKE MINING CO.	MILAN	V E
05	MI	MASON COUNTY LANDFILL	PERE MARQUETTE TWP	E
05	MI	CEMETERY DUMP	ROSE CENTER	R
01	RI	STAMINA MILLS, INC.	NORTH SMITHFIELD	R E
01	ME	PINETTE'S SALVAGE YARD	WASHBURN	D
06	TX	HARRIS (FARLEY ST)	HOUSTON	V E
03	PA	OLD CITY OF YORK LANDFILL	SEVEN VALLEYS	E
05	IL	BYRON SALVAGE YARD	BYRON	R
03	PA	STANLEY KESSLER	KING OF PRUSSIA	E
02	NJ	FRIEDMAN PROPERTY	UPPER FREEHOLD TWP	R
02	NJ	IMPERIAL OIL/CHAMPION CHEMICALS	MORGANVILLE	E
02	NJ	MYERS PROPERTY	FRANKLIN TOWNSHIP	D
02	NJ	PEPE FIELD	BOONTON	D
05	MI	OSSINEKE GROUND WATER CONTAM	OSSINEKE	R
03	WV	FOLLANSBEE	FOLLANSBEE	D
05	MI	U.S. AVIEX	HOWARD TOWNSHIP	E
06	NM	AT & SF / CLOVIS	CLOVIS	D
02	NY	AMERICAN THERMOSTAT CO.	SOUTH CAIRO	E
04	TN	LEWISBURG DUMP	LEWISBURG	D
05	MI	MCGRAW EDISON CORP.	ALBION	E
03	PA	METAL BANKS	PHILADELPHIA	E

#: V = VOLUNTARY OR NEGOTIATED RESPONSE; R = FEDERAL AND STATE RESPONSE;
E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.

[FR Doc. 83-24838 Filed 9-7-83; 8:45 am]

BILLING CODE 6560-50-C

Group 8

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
04	KY	B.F. GOODRICH	CALVERT CITY	D
05	MI	ORGANIC CHEMICALS, INC.	GRANDVILLE	E
02	PR	JUNCOS LANDFILL	JUNCOS	D
04	FL	MUNISPORT LANDFILL	NORTH MIAMI	D
02	NJ	M&T DELISA LANDFILL	ASBURY PARK	D
10	OR	GOULD, INC.	PORTLAND	E
05	MI	AUTO ION CHEMICALS, INC.	KALAMAZOO	R
04	SC	CAROLAWN, INC.	FORT LAWN	R E
05	MI	SPARTA LANDFILL	SPARTA TOWNSHIP	E
05	IL	ACME SOLVENT/MORRISTOWN	MORRISTOWN	R
01	ME	O'CONNOR	AUGUSTA	D
05	MI	RASMUSSEN'S DUMP	BRIGHTON	R
03	PA	WESTLINE	WESTLINE	D
05	MI	IONIA CITY LANDFILL	IONIA	R
05	IN	WEDGES INC	LEBANON	E
02	PR	GE WIRING DEVICES	JUANA DIAZ	D
05	OH	NEW LYME LANDFILL	NEW LYME	D
02	PR	RCA DEL CARIBE	BARCELONETA	D
03	PA	BRODHEAD CREEK	STROUDSBURG	R
05	MI	ANDERSON DEVELOPMENT CO.	ADRIAN	E
05	MI	SHIAWASSEE RIVER	HOWELL	R
03	DE	HARVEY & KNOTT DRUM, INC.	KIRKWOOD	R
04	TN	GALLAWAY PITS	GALLAWAY	E
05	OH	BIG D CAMPGROUND	KINGSVILLE	D
03	DE	WILDCAT LANDFILL	DOVER	D
03	PA	BLOSENSKI LANDFILL	WEST CALN TOWNSHIP	E
03	DE	DELAWARE CITY PVC PLANT	DELAWARE CITY	D
03	MD	LIMESTONE ROAD	CUMBERLAND	E
02	NY	BOOKER - 102ND STREET	NIAGARA FALLS	E
03	DE	NEW CASTLE STEEL	NEW CASTLE COUNTY	D
06	NM	UNITED NUCLEAR CORP.	CHURCH ROCK	D
06	AR	INDUSTRIAL WASTE CONTROL	FT. SMITH	D
09	CA	CELTOR CHEMICAL WORKS	HOOPA	R D
04	AL	PERDIDO GROUND WATER CONTAM	PERDIDO	D
02	NY	MARATHON BATTERY CORP.	COLD SPRINGS	D
03	PA	LEHIGH ELECTRIC & ENG. CO.	OLD FORGE BOROUGH	R E
05	OH	SKINNER LANDFILL	WEST CHESTER	D
04	NC	CHEMTRONICS, INC.	SWANNANOA	D
07	MO	SHENANDOAH STABLES	MOSCOW MILLS	E
06	LA	BAYOU SORFOUCA	SLIDELL	D
03	VA	SALTVILLE WASTE DISPOSAL PONDS	SALTVILLE	D
03	PA	KIMBERTON	KIMBERTON BOROUGH	D
03	MD	MIDDLETOWN ROAD DUMP	ANNAPOLIS	E
10	WA	PESTICIDE LAB	YAKIMA	D
05	IN	LEMON LANE LANDFILL	BLOOMINGTON	D
10	ID	ARRCOM (DREXLER ENTERPRISES)	RATHDRUM	D
03	PA	FISCHER & PORTER CO.	WARMINSTER	E
09	CA	JIBBOOM JUNKYARD	SACRAMENTO	D
02	NJ	A. O. POLYMER	SPARTA TOWNSHIP	R
02	NJ	DOVER MUNICIPAL WELL 4	DOVER	D

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Group 9

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
02	NJ	ROCKAWAY TOWNSHIP WELLS	ROCKAWAY	D
06	TX	TRIANGLE CHEMICAL CO.	BRIDGE CITY	R E
02	NJ	PJP LANDFILL	JERSEY CITY	D
03	PA	CRAIG FARM DRUM	PARKER	D
03	PA	VOORTMAN FARM	UPPER SAUCON TWP	D
05	IL	BELVIDERE MUNICIPAL LANDFILL	BELVIDERE	D

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[S WER-FRL 2421-2]

Amendment to National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the first update to the National Priorities List ("NPL") which is promulgated today as Appendix B of the National Oil and Hazardous Substances Contingency Plan ("NCP"), pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NPL be revised at least annually, and today's notice proposes the first such revision.

DATES: Comments may be submitted on or before November 7, 1983.

ADDRESSES: Comments may be mailed to Russell H. Wyer, Director, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public docket for the update to the NCP will contain Hazard Ranking System score sheets for all sites on the proposed update, as well as a "Documentation Record" for each site describing the information used to compute the scores. The main docket is located in Room S-325 of Waterside Mall, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9.00 a.m. to p.m., Monday through Friday, excluding holidays. Requests for copies of these documents should be directed to EPA Headquarters, although the same documents will be available for viewing in the EPA Regional Offices. In addition, the background data relied upon by the Agency in calculating or evaluating HRS scores are retained in the Regional Offices. Any such data in EPA files may be obtained upon request. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for requesting these data sources. Addresses for the Regional Office dockets are:

Jenifer Arns, Region I, U.S. EPA Library, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223-5791

Audrey Thomas, Region II, U.S. EPA Library, 10th Floor, New York, NY 10278, 212/264-2881

Diane McCreary, Region III, U.S. EPA Library, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, 215/597-0580

Carolyn Mitchell, Region IV, U.S. EPA Library, 345 Courtland Street NE., 404/257-4216

Lou Tilly, Region V, U.S. EPA Library, 230 South Dearborn Street, Chicago, IL 60604, 512/353-2022

Nita House, Region VI, U.S. EPA Library, First International Building, 1201 Elm Street, Dallas, TX 75270, 214/767-7341

Connier McKenzie, Region VII, U.S. EPA Library, Kansas City, MO 64106, 816/374-3497

Delores Eddy, Region VIII, U.S. EPA Library 1860 Lincoln Street, Denver, CO 80295, 303/837-2560

Jean Circiello, Region IX, U.S. EPA Library, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076

Julie Sears, Region X, U.S. EPA Library, 1200 6th Avenue, Seattle, WA 98101, 206/442-1289.

FOR FURTHER INFORMATION CONTACT: C. Scott Parrish, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, D.C., metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. NPL Update Process and Schedule

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9657, EPA is required to establish, as part of the National Contingency Plan (NCP) for responding to releases of hazardous substances, a National Priorities List (NPL) of sites of such releases. The NPL serves as guidance to EPA in setting priorities among sites for further investigation and possible response actions. After proposing over 400 sites for inclusion on the NPL on December 30, 1982 (47 FR 58476), EPA has established a final NPL, which is being published in today's **Federal Register** immediately preceding this update proposal. The preamble to that final list explains in more detail the purpose of the NPL, the criteria used to develop the list, and how it will be administered and revised. The purpose of this notice is to propose the addition of 133 new sites to the NPL.

CERCLA requires that the NPL be revised at least once per year, and today's notice proposes the first such revision. EPA believes, however, that it may be desirable to update the list on a more frequent basis. Thus, the Agency may revise the NPL more often than is specified in CERCLA. For each revision, EPA will inform the States of the closing dates for submission of candidate sites to EPA. In addition to these periodic updates, EPA believes it may be desirable in rare instances to propose separately the addition of individual sites on the NPL as the Agency did in the case of the Times Beach, Missouri, site.

As with the establishment of the initial NPL, States have the primary responsibility for selecting and scoring sites that are condidates for inclusion on the NPL using the Hazard Ranking System (HRS) and submitting the candidates to the EPA Regional Offices. The regional Offices then conduct a quality control review of the States' candidate sites. After conducting this review, the EPA Regional Offices submit condidate sites to EPA Headquarters. The Regions may include candidate sites in addition to those submitted by States. In reviewing these submissions, EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring.

EPA anticipates that each update publication will list sites in three categories: the "Current List;" "Proposed Additions;" and "Proposed Deletions". Sites on the "Current List" are those which have previously been proposed for listing, either in the initial NPL process or in any subsequent update proposal, and for which final scores have been established based on public comment and further investigation by EPA. In today's proposal, the "Current List" consists of the final NPL published immediately preceding this proposed update notice. As explained more fully in the preamble to the final NPL published today, once a site appears on the final "Current List," EPA does not expect to recalculate its HRS score. Although EPA does not plan to consider additional information on such sites for purposes of rescroing, the Agency always welcomes information on a site that may be useful in determining more precisely the nature of the release and what response actions may be appropriate.

"Proposed Additions" consist of sites not currently on the NPL that the Agency is proposing to add to the NPL. The "Proposed Additions" for this update are those contained in the list immediately following this preamble discussion. The Agency is requesting public comment on whether it is appropriate to add these sites to the final NPL, and may recalculate site scores based on comments received during the comment period.

"Proposed Deletions" will consist of sites on the current NPL that EPA proposes to delete because listing of the site no longer is appropriate. EPA is not today proposing to delete any sites from the NPL. The Agency will consider deleting sites on a case by case basis, according to internal EPA guidance currently being developed. Deletions may be based on such circumstances as the fact that the site has been cleaned up by EPA or the responsible party, or a determination that no fund-financed cleanup is appropriate. EPA does not anticipate, however, that deletions will be based on recalculations of a site's HRS score. The criteria for deletion under consideration by EPA are discussed more fully in the preamble to the final NPL.

II. Contents of the Proposed Update

Each entry on the final NPL, as well as proposed additions and deletions, contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. Each site EPA is proposing to add is placed by score in a group corresponding to the groups of 50 sites presented on the final NPL. Thus, the sites in group 1 of the proposed update have scores that fall within the range of scores covered by the first 50 sites on the final NPL. Each entry on the proposed update, as well as those on the final NPL, is accompanied by one or more notations on the status of response and enforcement activities at the site at the time the list was prepared or updated. These status categories are described briefly below.

Voluntary or Negotiated Response (V). Sites are included in this category if private parties are taking response actions pursuant to a consent order or agreement to which EPA is a party. Voluntary or negotiated cleanup may include actions taken pursuant to agreements reached after enforcement action had commenced. This category of response may include remedial investigations, feasibility studies, and other preliminary work, as well as actual cleanup.

Even though response actions qualify for notation in this category only if sanctioned by a formal agreement, this is not intended to preclude responsible parties from taking voluntary response actions outside of such an agreement. However, in order for the site to be deleted, or to be noted in the Voluntary or Negotiated Response category, EPA must still sanction the complete cleanup. If the remedial action is not fully implemented or is not consistent with the NCP, the responsible party may be subject to an enforcement action. Therefore, most responsible parties may find it in their best interest to negotiate a consent agreement.

Federal and State Response (R). The Federal and State Response category includes sites at which EPA or State agencies have commenced or completed removal or remedial actions under CERCLA, including remedial investigations and feasibility studies (see NCP section 300.68(f)(i)). For purposes of this categorization, EPA considers the response action to have begun when LPA has obligated funds. For some of the sites in this category, remedial investigations and feasibility studies may be followed by EPA enforcement actions, at which time the site status will change to "Federal or State Enforcement."

Federal or State Enforcement (E). This category includes sites where the United States or the State has filed a civil complaint or issued an administrative order. It also includes sites at which a Federal or State court has mandated some form of no-consensual response action following a judicial proceeding. It may not, however, include all sites at which preliminary enforcement activities are underway. A number of sites that EPA is proposing to add to the NPL are the subject of enforcement investigation or have been formally referred to the Department of Justice for enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, these sites have not been included in the enforcement category.

Actions to be Determined (D). This category includes all sites not listed in any other category. A wide range of activities may be in progress for sites in this category. The Agency may be considering a response action, or may be conducting an enforcement investigation. EPA may have referred a case involving a site to the Department of Justice, but no lawsuit has yet been filed. Investigations may be underway or needed to determine the source of a release in areas adjacent to or near a Federal facility. Responsible parties may be undertaking cleanup operations that are unknown to the Federal or State government, or corrective action may not be occurring yet.

EPA requests public comment on each of the sites it is proposing to add to the NPL, and will accept such comments for 60 days following the date of this notice. A "Documentation Record" and HRS scoring sheets for all proposed sites are available for inspection and copying in the NPL docket located in Washington, D.C. These documents are also available in the EPA Regional Offices, as are background data referred to in the Documentation Records and relied on for scoring. In some instances, where States calculated site scores and EPA review and quality control checking did not require direct inspection of background data, these data may be available only from the State that conducted the original scoring. After considering the relevant comments received during the comment period and determining the final score for each proposed site, the Agency will add to the current NPL at the time of the next update all sites that meet EPA's criteria for listing.

III. Additional Criteria for Listing

The preamble to the proposed NPL (47 FR 58476, December 30, 1982) stated that the more than 400 sites on the proposed list were included based primarily on total scores ("migration" or "S_m" scores) calculated according to the HRS. For the proposed NPL, all sites (with the exception of some sites designated by States as "top priority" sites) scored 28.50 or higher according to the HRS.

EPA has found that the HRS scoring factors provide a good estimate of the relative hazards at sites for purpose of establishing a list of national priorities for further investigation and possible remedial action. As explained in the preamble to the proposed NPL (47 FR 58479, December 30, 1982) and the preamble to the NCP which discusses the HRS (47 FR 31187–88, July 16, 1982), the HRS total score used for the NPL is designed to take into account a standard set of factors related to risks from migration of substances through ground water, surface water, and the air. Although the HRS also does provide an approximation of risk from direct contact with substances and from the possibility of fire and explosion, these pathway scores are not considered in computing the HRS "total score" of a site for purposes of listing. Rather, scores from the direct contact and fire and explosion pathways are used as guidance in determining the need for immediate removal action at a site.

EPA has found, however, that in certain instances EPA's authority to

conduct an immediate removal action may not be sufficient to address completely the direct contact risks at a site, and that remedial action may therefore be warranted. For example, where relocation of residents is the appropriate remedy, the Agency's removal authority extends only to evacuation of threatened residents, whereas its remedial authority may include permanent relocation of those residents. Although EPA can take removal actions, including temporary relocation of residents, irrespective of whether a site appears on the NPL, the NCP (40 CFR 300.68(a)) provides that remedial actins may be taken only at sites on the NPL.

Since the "direct contact" scores are not included in calculating the HRS total score for purposes of listing sites on the NPL, some of the sites involving direct contact to residents where remedial action, rather than immediate removal action, appears necessary to address the problem completely may not receive a sufficiently high HRS total score to be listed on the NPL. This situation has led EPA to believe that in limited circumstances it may be appropriate to consider other criteria than simply a sufficiently high HRS total score for purposes of listing sites on the NPL to make them eligible for remedial action.

Quail Run Mobile Manor, Gray Summit, Missouri, is an example of a site that presents a significant risk to the public that may warrant remedial action, although its HRS total score is too low for the site to be included on the NPL. During the winter of 1982–1983, the EPA conducted environmental sampling at Quail Run as part of its investigation of a number of sites in the State of Missouri that were potentially contaminated with dioxin. The investigation of the Quail Run site revealed widespread dioxin contamination of yards, roadsides, and garden areas, as well as high concentrations under the road pavement and presence in at least one residence.

In the case of Quail Run, EPA believes that a number of factors suggest that it may be appropriate to consider including the site on the NPL even though its HRS total score is less than 28.50. First, based on EPA's sampling, the Centers for Disease Control (CDC) on May 11, 1983 issued a public health advisory for the trailer park. This advisory was based on the risk to residents posed by direct contact with the contaminated areas. Second the Federal Emergency Management Agency determined that temporary relocation of the residents was necessary to protect public health, based on the CDC avisory and its determination that the possible human exposure would continue unless the residents left their homes. Finally, EPA's current assessment is that some type of remedial action—as opposed to an immediate removal action—may be the most health-protective and cost-effective response.

Therefore, EPA is proposing to add the Quail Run site to the NPL. Including the Quail Run site on the NPL will permit EPA to consider the broadest possible range of response actions, including remedial actions, that will protect the public health and environment and provide the most cost-effective response.

EPA recognizes, however, that the sole criterion in the NCP for listing sites on the NPL is a sufficiently high HRS total score (or designation by a State as its top priority site). Before EPA includes the Quail Run site on the NPL, therefore, the Agency intends to amend the NCP to authorize consideration of limited criteria other than the HRS total score for purposes of including sites on the NPL. These alternative criteria would take into account circumstances such as those existing at the Quail Run site.

In preparing a proposed amendment to the NCP, EPA will consider the advisability of relying in part on health assessments or advisories such as those issued by the newly formed Agency for Toxic Substances and Disease Registry (ATSDR) or special information from the Federal Emergency Management Agency. Such information could serve as the technical basis for an EPA advisory committee review and subsequent administrative decision on the relative risk of the site. A related approach, for situations where persons at different locations are affected by the risks of direct contact from common substances (such as dioxin), might be to group such sites by geography or political subdivision on the NPL. For example, EPA might develop some process whereby many of the locations in Missouri involving direct contact risks from dioxin could be grouped into a single listing on the NPL if a suitable health assessment or advisory had been issued by an agency such as ATSDR with respect to those locations. Of course, this approach could also apply to similar dioxin risks in other States or territories.

EPA anticipates, however, that any alternative criteria it may develop will apply only to a limited number and type of sites. With rare exception, the HRS has proven to be an effective tool for approximating the risk posed by sites, and will remain the principal criterion for listing. EPA invites comments on the general issue of considering alternative criteria for listing on the NPL and on approaches such as those discussed above, as well as on the inclusion of the Quail Run site.

IV. Regulatory Impact Analysis

The EPA has conducted a preliminary analysis of the economic implications of today's amendment to the NCP. The EPA belives that the direction of the economic effects of this revision is generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA.[1] Nevertheless, the Agency intends to go beyond this earlier characterization of possible effects with a more extensive analysis of the combined economic impact of this update proposal and other amendments to the NCP that EPA may propose in the near future. The analysis will accompany publication of future major amendments to the NCP. A more comprehensive examination, together with more than 2 years of experience with the Superfund program, will allow better estimates of the economic impact of this and other proposed amendments. In the meantime, the Agency belives the anticipated economic effects of adding 133 sites to the NPL can be characterized in terms of the conclusions of the earlier regulatory impact analysis.

Costs

The costs associated with revising the NCP that were estimated in the 1982 RIA included costs to States of meeting cost-share requirements; costs to industries and individual firms of financing remedies at NPL sites as a result either of enforcement or cost recovery action or of voluntary response; and macroeconomic costs resulting from effects on industries and State governments. Each of these types of costs is discussed below.

Costs to States associated with today's amendment arise from the statutory State cost-share requirement of 10 percent of remedial action costs at privately-owned sites. Using the assumptions developed in the 1982 RIA, we can assume that 90 percent of the 133 sites proposed for listing in this amendment will involve a 10 percent State cost share, and 10 percent will

[1] TCF Incorporated, Regulatory Impact Analysis of the Revisions to the National Oil and Hazardous Substances Contingency Plan, February 16, 1982. The analysis is available for inspection at the U.S. Environmental Protection Agency, 401 M Street, S. W., Washington, D.C. 20460.

involve a 50 percent cost share at publicly-owned sites. Estimating the average costs of a remedial action at $6.5 million, the cost to all States of undertaking Federal remedial actions at all 133 sites would be $121 million.

Cost to industry could result from required financing of remedies at sites on the NPL under enforcement or cost recovery action. Firms could also be induced to respond to sites for which they are responsible as a prudent business action to avoid possible enforcement actions and to prevent adverse publicity if they are linked to hazardous waste sites that are now national priority targets. Precise estimates must await the full analysis to be conducted; however, the range of costs would extend from zero (if none of the 133 sites is addressed) to a maximum of $865 million (if the 133 sites are privately-owned and each remedial action costs an average of $6.5 million). The EPA cannot identify at this time which firms may be threatened with specific portions of response costs. The act of adding a hazardous waste site to the NPL does not itself cause firms responsible for that site to bear these costs. Instead, listing acts only as a potential trigger for subsequent enforcement, cost recovery, or voluntary remedial efforts. Moreover, it remains at EPA's discretion whether or not to proceed with enforcement actions against firms which may be adversely affected by such actions.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that each dollar expended for a response puts someone to work directly or indirectly (through purchased materials).

The real benefits associated with today's amendment come in the form of increased health and environmental protection as a result of additional response actions at hazardous waste sites. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, torts, and/or enforcement action. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional NPL remedies, there will be lower human exposure to high-risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate. As an example of a rough calculation, the 1982 RIA estimated that the population potentially at risk from contamination of ground water, soil, and air would be reduced by approximately 1.8 million, 600,000, and 97,000 respectively, if remdial actions were taken at 170 NPL sites. Assuming an average estimate per NPL site of 10,000 people at risk of exposure to contaminated ground water, response actions at the 133 sites to be listed by this revision could result in a reduced risk of exposure to ground water contamination for up to 1.3 million people.

V. Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, the Agency has reviewed the impact of this revision to the NCP on small entities. The EPA certifies that the revision will not have a significant impact on a substantial number of small entities.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulation changes since the change does not automatically impose across-the-board costs. As a consequence, it is hard to predict effects. The Agency does expect that certain industries and firms within industries that have caused a proportionally high percentage of waste site problems will possibly be significantly affected by CERCLA actions. Being included on the NPL will increase the likelihood that these effects will occur. The costs, when imposed to these affected firms and industries, are justified because of the public health and environmental problems they have caused. Adverse effects are not expected to affect a substantial number of small businesses, as a class.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

PART 300—[AMENDED]

It is proposed to amend Appendix B of 40 CFR Part 300 by adding the following sites to the National Priorities List:

BILLING CODE 6560-50-M

Appendix B—National Priorities List

Group 1

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #		
03	PA	TYSONS DUMP	UPPER MERION TWP		R	
08	MT	EAST HELENA SMELTER	EAST HELENA			D
06	TX	GENEVA INDUSTRIES (FUHRMANN)	HOUSTON		R	E
02	NJ	VINELAND CHEMICAL CO.	VINELAND	V		E
02	NJ	FLORENCE LAND RECONTOURING LF	FLORENCE TOWNSHIP	V		E
02	NJ	SHIELDALLOY CORP.	NEWFIELD BOROUGH			E
05	WI	OMEGA HILLS NORTH LANDFILL	GERMANTOWN	V		E
05	OH	UNITED SCRAP LEAD CO.,INC.	TROY			D

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NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES;

Group 2

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #		
05	WI	JANESVILLE OLD LANDFILL	JANESVILLE			D
04	SC	INDEPENDENT NAIL CO.	BEAUFORT			D
04	SC	KALAMA SPECIALTY CHEMICALS	BEAUFORT		E	
05	WI	JANESVILLE ASH BEDS	JANESVILLE			D
05	OH	MIAMI COUNTY INCINERATOR	TROY			D
05	WI	WHEELER PIT	LA PRAIRIE TOWNSHIP			D
02	NY	HUDSON RIVER PCBS	HUDSON RIVER			D
01	CT	OLD SOUTHINGTON LANDFILL	SOUTHINGTON	V	E	
04	MS	FLOWOOD *	FLOWOOD			D

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Group 3

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
10	ID	UNION PACIFIC RAILROAD CO.	POCATELLO	E
04	AL	CIBA-GEIGY CORP. (MCINTOSH PLANT)	MCINTOSH	D
05	MN	ST. REGIS PAPER CO.	CASS LAKE	V
04	GA	HERCULES 009 LANDFILL	BRUNSWICK	D
05	MN	MACGILLIS & GIBBS/BELL & POLE	NEW BRIGHTON	D
05	WI	MUSKEGO SANITARY LANDFILL	MUSKEGO	D
02	NJ	VENTRON/VELSICOL	WOODRIDGE BOROUGH	E
04	SC	KOPPERS CO.,INC. (FLORENCE PLANT)	FLORENCE	E
02	NJ	NASCOLITE CORP.	MILLVILLE	E
05	MN	BOISE CASCADE/ONAN/MEDTRONICS	FRIDLEY	D
02	NJ	DELILAH ROAD	EGG HARBOR TOWNSHIP	E
03	PA	MILL CREEK DUMP	ERIE	R
05	WI	SCHMALZ DUMP	HARRISON	D
08	CO	LOWRY LANDFILL	ARAPAHOE COUNTY	E

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Group 4

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
04	SC	WAMCHEM, INC.	BURTON	D
02	NJ	CHEMICAL LEAMAN TANK LINERS, INC.	BRIDGEPORT	E
05	WI	MASTER DISPOSAL SERVICE LANDFILL	BROOKFIELD	E
02	NJ	W. R. GRACE CO. (WAYNE PLANT)	WAYNE TOWNSHIP	D
04	SC	LEONARD CHEMICAL CO.,INC.	ROCK HILL	V
04	AL	STAUFFER CHEM. (COLD CREEK PLANT)	BUCKS	D
04	GA	OLIN CORP. (AREAS 1,2 & 4)	AUGUSTA	V
05	OH	SOUTH POINT PLANT	SOUTH POINT	D
03	PA	DORNEY ROAD LANDFILL	UPPER MACUNGIE TWP	D
05	IN	NORTHSIDE SANITARY LANDFILL	ZIONSVILLE	E
09	CA	ATLAS ASBESTOS MINE	FRESNO COUNTY	E
09	CA	COALINGA ASBESTOS MINE	COALINGA	D
02	NJ	EWAN PROPERTY	SHAMONG TOWNSHIP	D
10	ID	PACIFIC HIDE & FUR RECYCLING CO.	POCATELLO	R E
05	MN	JOSLYN MFG. & SUPPLY CO.	BROOKLYN CENTER	D
05	MN	ARROWHEAD REFINERY CO.	HERMANTOWN	D
05	WI	MOSS-AMERICAN(KERR-MCGEE OIL CO.)	MILWAUKEE	D

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Group 5

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
01	MA	IRON HORSE PARK	BILLERICA	D
05	WI	KOHLER CO. LANDFILL	SHEBOYGAN	D
05	IN	REILLY TAR & CHEMICAL CORP.	INDIANAPOLIS	D
05	WI	LAUER I SANITARY LANDFILL	MENOMONEE FALLS	E
05	MN	UNION SCRAP	MINNEAPOLIS	D
02	NJ	RADIATION TECHNOLOGY, INC.	ROCKAWAY TOWNSHIP	E
05	WI	ONALASKA MUNICIPAL LANDFILL	ONALASKA	D
05	MN	NUTTING TRUCK & CASTER CO.	FARIBAULT	D
02	PR	VEGA ALTA PUBLIC SUPPLY WELLS	VEGA ALTA	D
05	MI	STURGIS MUNICIPAL WELLS	STURGIS	D
05	MN	WASHINGTON COUNTY LANDFILL	LAKE ELMO	R
09	CA	SAN GABRIEL AREA 1	EL MONTE	D
09	CA	SAN GABRIEL AREA 2	BALDWIN PARK AREA	D
06	TX	PIG ROAD	NEW WAVERLY	D
02	PR	UPJOHN FACILITY	BARCELONETA	V
03	PA	HENDERSON ROAD	UPPER MERION TWP	D
06	LA	PETRO-PROCESSORS	SCOTLANDVILLE	E
03	PA	INDUSTRIAL LANE LANDFILL	WILLIAMS TOWNSHIP	D
03	PA	EAST MOUNT ZION	SPRINGETTSBURY TWP	D
02	NY	GENERAL MOTORS-CENT. FOUNDRY DIV.	MASSENA	D
03	DE	OLD BRINE SLUDGE LANDFILL	DELAWARE CITY	D
05	MN	WHITTAKER CORP.	MINNEAPOLIS	D

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Group 6

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
01	CT	KELLOGG-DEERING WELL FIELD	NORWALK	V E
04	AL	OLIN CORP. (MCINTOSH PLANT)	MCINTOSH	V
04	FL	TRI-CITY OIL CONSERVATIONIST, INC.	TEMPLE TERRACE	D
05	WI	NORTHERN ENGRAVING CO.	SPARTA	D
01	NH	KEARSAGE METALLURGICAL CORP.	CONWAY	V E
04	SC	PALMETTO WOOD PRESERVING	DIXIANNA	E
05	MN	MORRIS ARSENIC DUMP	MORRIS	D
05	MN	PERHAM ARSENIC	PERHAM	D
01	NH	SAVAGE MUNICIPAL WATER SUPPLY	MILFORD	D
05	IN	POER FARM	HANCOCK COUNTY	R
06	TX	UNITED CREOSOTING CO.	CONROE	D
05	WI	CITY DISPOSAL CORP. LANDFILL	DUNN	D
02	NJ	TABERNACLE DRUM DUMP	TABERNACLE TWP	D
02	NJ	COOPER ROAD	VOORHEES TOWNSHIP	D
04	FL	CABOT-KOPPERS	GAINESVILLE	D

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Group 7

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
05	MN	GENERAL MILLS/HENKEL CORP.	MINNEAPOLIS	R
09	CA	DEL NORTE PESTICIDE STORAGE	CRESCENT CITY	D
02	NJ	DE REWAL CHEMICAL CO.	KINGWOOD TOWNSHIP	D
04	GA	MONSANTO CORP. (AUGUSTA PLANT)	AUGUSTA	D
01	NH	SOUTH MUNICIPAL WATER SUPPLY WELL	PETERSBOROUGH	D
05	WI	EAU CLAIRE MUNCIPAL WELL FIELD	EAU CLAIRE CITY	D
04	GA	POWERSVILLE	PEACH COUNTY	D
05	MI	METAMORA LANDFILL	METAMORA	D
02	NJ	DIAMOND ALKALI CO.	NEWARK	R
02	PR	FIBERS PUBLIC SUPPLY WELLS	JOBOS	D
05	WI	MID-STATE DISPOSAL, INC.,LANDFILL	CLEVELAND TOWNSHIP	E
08	CO	BRODERICK WOOD PRODUCTS	DENVER	D
02	NJ	WOODLAND ROUTE 532 DUMP	WOODLAND TOWNSHIP	D
05	IN	AMERICAN CHEMICAL SERVICE	GRIFFITH	D
05	WI	LEMBERGER TRANSPORT & RECYCLING	FRANKLIN TOWNSHIP	E
10	WA	QUEEN CITY FARMS	MAPLE VALLEY	D
05	WI	SCRAP PROCESSING CO., INC.	MEDFORD	D
02	NJ	HOPKINS FARM	PLUMSTEAD TOWNSHIP	D
02	NJ	WILSON FARM	PLUMSTEAD TOWNSHIP	R
06	OK	COMPASS INDUSTRIES	TULSA	R
09	CA	KOPPERS CO.,INC. (OROVILLE PLANT)	OROVILLE	E
03	PA	WALSH LANDFILL	HONEYBROOK TWP	D
02	NJ	UPPER DEERFIELD TOWNSHIP SLF	UPPER DEERFIELD TWP	E

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Group 8

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
01	MA	SULLIVAN'S LEDGE	NEW BEDFORD				D
05	IN	BENNETT STONE QUARRY	BLOOMINGTON		R		
04	AL	STAUFFER CHEM. (LE MOYNE PLANT)	AXIS				D
04	SC	GEIGER (C&M OIL)	RANTOULES				D
05	WI	WASTE RESEARCH & RECLAMATION CO.	EAU CLAIRE	V		E	
04	FL	PEPPER STEEL & ALLOYS, INC.	MEDLEY	V	R	E	
05	MN	ST. LOUIS RIVER	ST. LOUIS COUNTY				D
03	PA	BERKS SAND PIT	LONGSWAMP TOWNSHIP				D
04	FL	HIPPS ROAD LANDFILL	DUVAL COUNTY		R		
05	WI	OCONOMOWOC ELECTROPLATING CO.	ASHIPPIN			E	
08	CO	LINCOLN PARK	CANON CITY				D
02	NJ	WOODLAND ROUTE 72 DUMP	WOODLAND TOWNSHIP				D
10	OR	UNITED CHROME PRODUCTS, INC.	CORVALLIS				D
02	NJ	LANDFILL & DEVELOPMENT CO.	MOUNT HOLLY	V		E	
03	PA	TAYLOR BOROUGH DUMP	TAYLOR BOROUGH				D
05	OH	POWELL ROAD LANDFILL	DAYTON				D
05	MI	BURROWS SANITATION	HARTFORD		R		
10	WA	ROSCH PROPERTY	ROY				D

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Group 9

EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
05	WI	DELAVAN MUNICIPAL WELL #4	DELAVAN				D
09	CA	SAN GABRIEL AREA 3	ALHAMBRA				D
09	CA	SAN GABRIEL AREA 4	LA PUENTE				D
10	WA	AMERICAN LAKE GARDENS	TACOMA		R		
10	WA	GREENACRES LANDFILL	SPOKANE COUNTY				D
06	OK	SAND SPRINGS PETROCHEMICAL	SAND SPRINGS		R		
07	MO	QUAIL RUN MOBILE MANOR	GRAY SUMMIT		R		

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federal register

Thursday
September 8, 1983

Part VIII

Department of Transportation

Office of the Secretary

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From the Department of Transportation

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 56b; Notice No. 83-14]

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 504 of the Rehabilitation Act of 1973 provides that "no otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." The Department is currently implementing this statute in the mass transit area through an interim final rule. This proposal would replace the interim final rule with a new regulation consistent with section 317(c) of the Surface Transportation Assistance Act of 1982. The proposed regulation would establish minimum criteria for the provision of transportation services to handicapped and elderly persons, provide for public participation in the establishment of such services, and create a mechanism through which the Department can monitor the compliance with the regulation of transit providers receiving financial assistance form the Department.

DATE: Comments should be received in the Department by November 7, 1983.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 56b, Department of Transportation, Room 10105, 400 7th Street, SW., Washington D.C., 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Assistance General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10105, 400 7th Street, SW., Washington, D.C. 20590. 202/426-4723. Hearing-impaired persons may contact Mr. Ashby by using TTY (202) 755-7687. The NPRM has been taped for the use of visually-impaired persons.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973 provides that "no otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." The Department's existing regulation appears in 49 CFR Part 27, and implements this statute, section 16(a) of the Urban Mass Transportation Act of 1964 and section 165(b) of the Federal-Aid Highway act of 1973. This regulation, originally published in 1979, prescribed various planning and other administrative requirements and prohibited employment discrimination on the basis of handicap. It also imposed general requirements for the accessibility of DOT-assisted programs and activities to handicapped persons and specific accessibility requirements for Federally aided highways, airports, intercity rail service, and mass transit.

The 1979 regulations, as they applied to mass transit, were very costly and controversial. The American Public Transit Association (APTA) and several of its members sued the Department in June 1979, alleging that the mass transit requirements of the 1979 rule exceeded the Department's authority and were arbitrary and capricious. The U.S. District Court of the District of Columbia upheld the rule, but the Court of Appeals for the District of Columbia Circuit reversed the District Court's decision (*American Public Transit Association v. Lewis*, 556 F.2d 1271 (D.C. Cir., 1981)). The Court of Appeals held that, under section 504, a transit authority might be required to take "modest, affirmative steps to accommodate handicapped persons" in order to avoid the discrimination that section 504 prohibits. In the Court's view, however, the regulation required extensive and costly affirmative action efforts to modify existing systems and, therefore, exceeded the Department's authority under the statute.

While the court decision was pending, the Presidential Task Force on Regulatory Relief determined that the regulation deserved priority review. As a result of this review, the Department established a clear policy concerning mass transit for handicapped persons. The Department believes that recipients of Federal assistance for mass transit must provide transportation that handicapped persons can use but that local communities have the major responsibility for deciding how this transportation should be provided.

Following the establishment of this policy and the Court decision, the Department issued an interim final rule in July 1981, which deleted the mass transit requirements of the original regulation and substituted a new section. The new section requires recipients to certify that special efforts are being made in their service area to provide transportation that handicapped persons can use. The interim final rule was designed as a temporary measure to remain in effect only until a permanent regulation could be adopted. This NPRM proposes a replacement for the interim final rule.

As required by Executive Order 11914, the Department's 1979 regulation was consistent with government-wide guidelines promulgated by the Department of Health, Education, and Welfare (HEW). These guidelines included a specific requirement that each mode of mass transit be made accessible to handicapped persons. Following the dissolution of HEW, Executive Order 12250 transferred responsibility of the guidelines to the Department of Justice (DOJ). In August 1981, in response to the APTA decision, DOJ suspended the application of the guidelines to mass transit. Both the interim final rule and this NPRM were approved by DOJ pursuant to Executive Order 12250.

Comments on the Interim Final Rule

The Department received approximately 300 comments in response to the interim final rule. Of these, 141 were from persons identifying themselves as handicapped individuals or from groups representing them. Thirty were from transit operators or groups representing them, 56 from various state and local agencies, 18 from metropolitan planning organizations or other regional associations of governments, and 54 were from people or organizations not falling into any of these categories.

Most handicapped persons and organizations commenting on the interim final rule opposed its provisions. Many of the 115 commenters in this category who opposed the interim final rule favored retaining the accessibility requirements of the Department's original section 504 rule or requiring that transit authorities that provide special services be required to meet service criteria. The service criteria would be designed to ensure comparable service for handicapped persons. The criteria commenters mentioned included same

geographic service area, same hours of service, comparable fares, no restrictions or priorities based on trip purpose, and reasonable wait time. Thirteen commenters in the handicapped person and group category favored the interim final rule and the local option/special services approach to providing transportation for handicapped persons. The rest of the comments could not be classified as either for or against the interim final rule.

Thirty transit authorities commented on the interim final rule; a majority of them (23) favored the interim final rule's approach. They also endorsed local option and special services as the best way to provide transportation services for handicapped persons. Most metropolitan planning organizations and other regional associations of governments also favored local option and special services. Fourteen of these favored the interim final rule, and the other 4 commented without expressing support or opposition. On the other hand, state and local government agencies or organizations gave mixed responses. In this category, 28 favored the interim final rule, 16 were opposed (most of whom favored an accessibility or service criteria approach) and 12 commented but did not indicate a position for or against. The mixed nature in this category is attributable, in part, to the fact that the category includes both state and local agencies concerned principally with transportation matters, such as state Departments of Transportation, and agencies concerned with providing services to handicapped persons, such as state vocational rehabilitation agencies. Many of the agencies in this category also favored a service criteria approach to providing transit services for handicapped persons.

Of the remaining commenters, 33 opposed the interim final rule, 14 favored it, and 7 did not express an opinion for or against. Many opponents in this category supported retaining accessibility requirements or requiring service criteria.

Two issues in the regulation received numerous comments from a variety of commenters. First, there was broad support for retaining or strengthening public participation requirements in the planning of transportation services for handicapped persons, including requirements for the participation of handicapped persons in the process. Second, commenters expressed substantial concern about the financial level of effort criterion (3.5 percent of section 5 funds) in the interim final rule. Many commenters thought that this criterion was too vague or too low. In addition, many pointed out that the criterion did not provide a sound basis for determining an appropriate financial level of effort over the long term because, under Administration legislative proposals, operating assistance funds under section 5 would be phased out.

Section 317(c) of the Surface Transportation Assistance Act of 1982

Section 317(c) of the Surface Transportation Assistance Act of 1982 directly affects the content of this proposed rule. It provides as follows:

> In carrying our subsection (a) of this section [section 16 (a) of the Urban Mass Transportation Act of 1964, as amended] section 165(b) of the Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (consistent with any applicable government-wide standards for the implementation of such section 504), the Secretary shall, not later than 90 days after the date of enactment of this subsection, publish in the **Federal Register** for public comment, proposed regulations and, not later than 180 days after the date of such enactment, promulgate final regulations, establishing (1) minimum criteria for the provision of transportation services to handicapped and elderly individuals by recipients of Federal financial assistance under this Act or any provision of law referred to in section 165(b) of the Federal-Aid Highway Act of 1973, and (2) Procedures for the Secretary to monitor recipients' compliance with such criteria. Such regulations shall include provisions ensuring that organizations and groups representing such individuals are given adequate notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations.

This provision was sponsored by Senators Cranston and Riegle. The sponsors' floor statements expressed concern that the Department's interim rule did not ensure adequate service for handicapped persons. For example, Senator Cranston, in his discussion of a General Accounting Office survey of transportation systems, referred to "widespread deficiencies" in paratransit services for handicapped persons, such as waiting lists, long advance notice requirements, priorities based on trip purpose, shorter hours and fewer days of service, denials of requests for service, smaller geographical area of service, and inaccessibility of paratransit vehicles. He and Senator Riegle also cited the survey as evidence that some transit authorities had stopped or slowed programs to make their buses accessible. In addition, the Senators believed that procedural problems—the absence of requirements for public participation in the formulation of transportation services for handicapped persons and a mechanism enabling the Department to know whether recipients were complying with section 504 requirements—also impeded the provision of adequate service for handicapped persons.

To address these problems, which Congress believed stemmed from the interim final rule, section 317(c) directs the Department to change its approach to implementing section 504 both substantively and procedurally. Substantively, the statute requires that DOT's new regulation include "minimum criteria for the provision of transportation services" to handicapped persons. Procedurally, the statute calls for explicit regulatory provisions concerning the participation of handicapped persons in the establishment of transportation services for their use and for monitoring by the Department of recipients' compliance with section 504 requirements. This proposed rule includes provisions carrying out these new substantive and procedural requirements of the statute.

The version of section 317(c) that the Senate originally passed was stronger than the language the Congress eventually enacted, requiring "minimum criteria for each recipient . . . to provide handicapped and elderly individuals with transportation services that such individuals can use *and that are the same as or comparable to those which the recipient provides to the general public*" (emphasis added). Of the two requirements that this version imposed—minimum criteria for the provision of service and "same or comparable" service—the final version of the section retained only the former. The "same or comparable" formulation was dropped by the Conference Committee. It is reasonable to interpret this deletion to mean that the "minimum criteria" required by the final version of the section do not have to result in service for handicapped persons that is the same as or comparable to that provided the general public.

Section 317(c) is the latest and most definitive instruction by Congress to the Department concerning the regulatory requirements the Department much impose with respect to mass transit services for handicapped and elderly individuals. The proposed rule is intended to implement this Congressional instruction. Section 317(c) does not amend section 504 or diminish the nondiscrimination obligation of recipients under section 504. As coordinator of section 504 enforcement

pursuant to Executive Order 12250, DOJ has approved the proposed rule.

Section-by-Section Analysis

Section 27.77(a) Certification

Subparagraph (1) provides that, as under the interim final rule, each recipient of Federal financial assistance for capital or operating expenses of urban mass transportation systems (under sections 3, 5, 9, and 9A of the Urban Mass Transportation Act; recipients of funds only under section 18 would be treated separately) would be required to certify to the Urban Mass Transportation Administration (UMTA) that it is complying with the rule. In this case, compliance means having in effect a program for the provision of transportation services to handicapped and elderly individuals. The certification acceptance approach is designed to reduce administrative burdens and delays associated with a requirement for prior approval of a program by the Department. The certification must state that the recipient has met all procedural and substantive requirements set forth in the rest of this section.

Subparagraph (2) states the certification requirement for recipients only of section 18 funds. This requirement would be the same as under the existing regulation. The Department is proposing to retain this relatively less burdensome requirement because section 18 recipients tend to be small entitites—small cities and rural jurisdictions. Consistent with the policies of the Regulatory Flexibility Act, the Department believes it appropriate, in this situation, to impose fewer substantive and procedural burdens on these recipients. In addition, many section 18 recipients are likely to be called upon to serve only a few handicapped persons.

Section 18 recipients have an obligation under this subparagraph to provide service for handicapped persons, but, given the nature of small cities and rural areas, it is probable that they can provide this service on an informal basis without the more elaborate substantive and procedural requirements imposed on larger urban areas. Section 18 certifications would be sent to the Federal Highway Administrator rather than the UMTA Administrator because the Secretary has delegated primary responsibility for administering the section 18 program to the Federal Highway Administration. The Department seeks comment on whether this approach to section 18 recipients is appropriate. We request that commenters favoring a different approach make suggestions concerning how the Department can be responsive to the situation of small recipients.

Subparagraph (3) provides that the certification would stand for compliance with section 504, section 16(a), and section 165(b). While the Department would regularly monitor compliance with the requirements, and the Department could "look behind" the recipient's certification to ensure that it is delivering the promised services and following the appropriate procedures, a recipient with a valid certification would normally be regarded by the Department as meeting statutory requirements with respect to the provision of transportation services to handicapped persons.

Section 27.77(b) Types of Service

The Department is fully committed to the policy of allowing each local area to determine the kind of transportation service for handicapped persons that best fits its circumstances. The department is aware that no one kind of service is right for all areas. At the same time, section 317(c) requires minimum criteria for the provision of service to handicapped persons. In this paragraph, the Department proposes three alternative ways that recipients can meet their obligation to provide transportation services for handicapped persons. Whatever choice a recipient made, it would have to ensure, subject to the cost limit of paragraph (d), that the service it provided met the service criteria of paragraph (c).

Subaragraph (1) permits recipients to choose to make 50 percent of its fixed route bus service accessible. To meet this requirement, a recipient would have to ensure that half of the buses it has on the street during both peak (i.e., rush hour) and non-peak periods are lift-equipped or otherwise accessible to wheelchair users and semiambulatory persons. In order to maintain the 50 percent "on the street" level of service, the recipient would probably have to have a sufficient number of accessible buses in its reserve fleet to substitute for accessible buses that were in the shop at a given time. The relationship of accessible bus service to the service criteria is discussed further in the last paragraph of the discussion of paragraph (c) below.

One difficult problem that has arisen in the past is the use of lift-equipped buses by semiambulatory persons (e.g., persons who can walk with walkers or crutches but who are not wheelchair users). Some transit authorities permit such persons to use bus lifts. Others, citing potential safety and legal liability problems, permit only wheelchair users to use the lifts. The Department's policy has been to let transit authorities make this decision based on their own evaluation of the risks involved. The Department seeks comment on this issue and on whether the final regulation should impose any requirements or standards with respect to the use of bus lifts by semiambulatory persons.

Subparagraph (2) permits recipients to establish a paratransit or special services system to provide transportation for handicapped and elderly persons. Such a system would provide demand-responsive service by means such as accessible vans operated by the recipient or subsidized taxi vouchers.

Recipients are required to regard as eligible for special service under this subparagraph or subparagraph (3) all handicapped and elderly persons who, because of their handicap or age, are unable to use the recipient's service for the general public. This requirement has two important implications. First, the service may not be restricted to one or more types of handicapped persons (e.g., wheelchair users), with other types of handicapped persons (e.g., blind or mentally retarded persons) categorically excluded. The question is whether a given individual can use the recipient's service for the general public. If not, then he or she must be regarded as eligible for the special service.

Second, being elderly (i.e., over a certain age) does not, by itself, confer eligibility for the special service. The key is whether or not a particular elderly person can use the service for the general public. If, because of age, an individual is unable to use the regular service—even if that individual does not not have a specific, identifiable physical handicap—that individual is eligible for the special service. For example, some 80 year old individuals may be able to use the service for the general public, and some 65 year old individuals may be unable to do so.

The Department seeks comment on whether it is appropriate to require recipients to regard elderly and handicapped persons not having identifiable mobility handicaps (e.g., mentally handicapped persons whose inability to find their way around a city using the regular bus system, rather than any physical mobility handicap, prevents their using the transportation service for the general public) as eligible to use a paratransit service. The rationale for not having such a requirement could be that in a system being used to its capacity, use of the system by handicapped persons without mobility handicaps could restrict the system's use by mobility handicapped

persons. However, section 504 makes no distinction among different types of handicapped persons. In this context, we would point out that it would be consistent with the intent of the proposed rule for a recipient to provide a combination of different kinds of special services designed to fit the needs of people with different sorts of handicaps.

Subparagraph (3) permits recipients to choose a mix of fixed route accessibility and special service paratransit. For example, a recipient could make 15 percent of its buses accessible limiting their use to two or three important corridors. The recipient could then establish a paratransit system to cover other areas of the service area. Another example of a mixed system would be a "dial-a-bus" program, in which a recipient has a number of accessible buses which it assigns to certain trips on a demand-responsive basis. The accessible fixed route and special service components of the system, taken together, would have to meet the service criteria of paragraph (c).

While all handicapped or elderly individuals who could not use the recipient's service for the general public would be eligible to use the paratransit component of a mixed service, a recipient would not be required to provide duplicate service. If fixed route accessible bus service were provided between point A and point B, the recipient would not have to provide paratransit service between these same points. The recipient, consistent with the service criteria, would have to provide service between Point A or Point B and other points in the general service area not served by accessible bus service, however. The Department seeks comments on whether, in a mixed system, there could be problems with inconvenience caused by multiple transfers between different components of the system. If so, should the final regulation impose limits on transfers or use another mechanism for dealing with the problem?

To understand how this paragraph would work in practice, one needs to understand that its requirements are "subject to the cost limit of paragraph (d) of this section" (the calculation of this cost limit is discussed in the portion of this preamble that explains paragraph (d)). That cost limit is not a minimum expenditure requirement. If the recipient can meet the requirements of paragraph (b) while spending less than the cost limit, the recipient is not required to spend more. Nor is the cost limit a ceiling on the amount of funds a recipient may spend on transportation services for handicapped persons. The recipient always has the choice to spend more. Rather, the cost limit is a ceiling on the amount of funds the recipient is required to spend to comply with the requirements of this paragraph. The recipient would not be required to achieve full compliance with paragraph (b) in a given year to the extent that it could not do so without exceeding the cost limit. Within the cost limit, the Department expects recipients to meet their obligations to provide transportation to handicapped persons in the most cost-effective way possible.

A few hypothetical examples may explain how the cost limit would affect the requirements of paragraph (b). The Hypothetical Area Transit System (HATS) is an imaginary UMTA recipient. For fiscal year (FY) 1984, its cost limit is $319,500. At the present time, HATS has no accessible buses among its fleet of 150 buses (all of which are in use during the area's hypothetical rush hour) and does not operate a paratransit service.

Under subparagraph (1), HATS could choose to make 50 percent of its buses accessible. In FY 1984, HATS is planning to buy 30 new buses to replace an equal number of older vehicles. It costs HATS an additional $12,000 to have the manufacturer add a lift to each bus. If HATS decides to order lifts for all its new buses, the cost will come to $360,000. The incremental cost of maintaining a lift-equipped bus for year is $1,000. Therefore, the cost of buying and maintaining 30 lift-equipped bused for FY 1984 would be $390,000. This figure exceeds the cost limit by $70,500. HATS is not required to spend this $70,500 in FY 1984.

HATS could voluntarily spend the entire $390,000. However, it also has the option (among others) of buying lifts on only 24 of the 30 new buses, thereby saving $78,000. If it did so, its total expenditures for the year would be $312,000. Since HATS does not yet have 50 percent of its buses accessible, it would be required to use the $7,500 to ensure that it would meet, as closely as possible, the service criteria with its existing bused or on other expenditures allowable under paragraph (e) of the regulation (e.g., marketing for the accessible service, training for drivers) relating to the provision of accessible service.

Of course, HATS could choose, subject to the public participation requirements of paragraph (g) of the regulation, to buy fewer buses and spend more on marketing, training, and other allowable administrative costs. The Department stresses, however, that recipients' efforts should be directed toward "on the street service." While training, marketing and other administrative activities are important, recipients should not overemphasize them at the expense of actually providing accessible transportation services. The Department would examine the balance between administrative expenses and service provision in programs submitted to the Department under paragraph (g).

The Department seeks comment on one possible variation to this scheme. The rule could permit recipients to take credit for their expenditures above the cost limit in the following two or three-year period. In the above example, HATS could order lifts on all 30 of the buses it buys in FY 1984, adding the amount in excess of its cost limit for that year to its allowable expenditures for FY 1985. HATS would not, however, be permitted to spend less than its cost limit in FY 1984 (because it has not yet reached 50 percent accessibility) and compensate by higher expenditures in subsequent years. Is this idea consistent with the "prevention of undue hardship" rationale for the cost limit? Is it or some other averaging scheme workable? If such provision is adopted, should the Department set limits on the degree of averaging that should occur, in order to prevent undue fluctuations in levels of support for service?

HATS would be required to make expenditures up to its cost limit every year until the 50 percent accessibility level was reached. Once having reached that level (e.g., 75 buses) HATS would only be required to spend the funds needed to maintain the lifts (e.g., $75,000 per year), administer the system (e.g., marketing or training related to the accessible bus service) plus whatever amount was needed to replace worn-out-lift-equipped buses with new lift-equipped buses on a one-for-one basis. The fact that this amount was substantially below the cost limit for any year would not mean that HATS would have to spend more.

During the years before HATS reached the 50 percent level, it would be required to provide service to handicapped persons with the buses it had. HATS would design this service in consultation with handicapped persons and organizations representing them as part of the public participation process required by subparagraphs (g)(1)-(4) of this section. One of the issues the recipient should discuss as part of this consultation process is the tradeoff between immediate provision of usable transportation and the buildup of the final accessible system. For example, a

recipient could buy fewer accessible buses each year (resulting in a longer period of time before the 50 percent level was reached) and spend some of its funds on a transitional special services system which would provide, during the early years of the system, more rides to handicapped individuals. The Department seeks comment on whether the final rule should include any provisions governing this kind of trade-off.

Under subparagraph (2), HATS could choose to establish a special service system, the Hypothetical Area Paratransit Service (HAPS). For FY 1984, the capital and operating costs of HAPS—assuming it met all service criteria—would be $400,000. But HATS is required to spend only $319,500. HATS could voluntarily spend the entire $400,000. If it does not choose to do so, HATS could make trade-offs among the various service criteria to the point where the combined capital and operating costs of HAPS fell to $319,500. For example, if HAPS did not operate on evenings and weekends, established some restrictions on trip purpose, and charged fares a dollar higher than regular bus service, HAPS could reduce capital and operating outlays by $80,500. HATS would use the public participation process to obtain the views of handicapped persons and their groups concerning these trade-offs. On the other hand, if HAPS could meet all service criteria for $250,000, HAPS would not have to spend another $69,500 to come up to the cost limit.

Under subparagraph (3), HATS could use accessible buses on two major routes and use HAPS to cover the remainder of the service area. If HATS bought eight lift-equipped buses toward this end in FY 1984, it would spend $104,000 (including maintenance) on the accessible bus portion of its mixed service. HATS would not be required to spend more than $215,500 on its HAPS paratransit service in this case. If the cost of meeting all service criteria for the HAPS service exceeded $215,500, HATS could again make trade-offs among the service criteria to bring costs down to this level. In deciding on the service and resource allocation mixes between accessible bus and HAPS service, as well as in deciding the service criteria trade-offs in the HAPS component of the mix, HATS would obtain the views of handicapped persons and their organizations through the public participation process.

This portion of the rule speaks in terms of bus and special services. Where accessible rail systems exist, it would make sense for recipients to integrate their accessible bus or paratransit service with the accessible rail service. As pointed out in the discussion of the cost limit, however, costs of accessibility modifications to rail systems required by the Architectural Barriers Act of 1968 could not be counted toward the cost limit.

In addition, the three alternatives for meeting section 504 requirements proposed in this paragraph do not directly address one situation that may exist in some parts of the country. The Department seeks comment on what, if anything, the regulation should provide with respect to commuter rail operations that extend beyond normal mass transit service areas and that, in some cases, may not be operated by agencies that have regular mass transit systems. For example, Maryland DOT operates a commuter rail service between Brunswick, Maryland and Washington, D.C. This service extends far beyond the service areas for the Washington Metropolitan Area Transit Authority's bus and rapid rail systems.

If a special provision for commuter rail operations is included in the final rule, it could take a number of different forms. For example, it could require certain rail vehicles and key stations to be made accessible (similar to the commuter rail provision of the Department's 1979 rule). It could require special service (e.g., accessible vans) running along commuter rail routes during morning and evening rush hours. It could allow commuter rail operators to choose among these or other options. The Department's regulatory impact analysis discusses the potential costs of some of these options.

Section 27.77(c) Service Criteria

This paragraph lists six service criteria which special service systems under subparagraphs (b) (2) and (3) are required to meet. As mentioned in the discussion of paragraph (b), the requirement to meet these criteria is subject to the cost limit of paragraph (d). Recipients have a responsibility to meet these criteria in a sensible manner that maximizes the utility of transportation services to their users. The UMTA Administrator would not accept a certification of a program that, while technically meeting the criteria, was not compatible with the objectives of this regulation (e.g., a system that met all criteria for only eight months out of the year and did not operate during the rest of the year).

The first criterion is that the service shall be available to handicapped persons throughout the same general service area as the recipient's service for the general public. Generally speaking, if a member of the public can get to a given location by fixed route service, the special service should take a handicapped user there.

The Department seeks comments on how the regulation should treat service that extends substantially beyond the normal urban service area. For example, Baltimore's regular bus service covers the City of Baltimore and Baltimore County, which surrounds the city. However, there are extended commuter bus runs to locations such as Annapolis, about 40 miles away from downtown Baltimore. Under the proposed rule, the recipient would cover these routes if it could do so within the cost cap. If not, the coverage of these routes could be one of the factors involved in a tradeoff with other demands on resources. Should the final rule include any special provision concerning this situation?

The second criterion is that the special service be available on the same days and during the same hours as the recipient's service for the general public. If the recipient's regular bus service, for example, runs evenings and weekends, so should the special service.

The third criterion is that the fare for a handicapped person using the special service be comparable to the fare for a member of the general public using the recipient's regular service. These comparable fares can vary, as do the fares for the general public, with the length of the trip and time of day (e.g., rush hour vs. non-peak). By saying "comparable" fares, the Department does not mean "identical" fares. Any variance between special service and regular service fares should be relatively small, however, and be justifiable in terms of actual differences between the two kinds of service provided by the recipient.

In existing special service systems, it is common for transportation to be restricted to certain purposes, such as medical treatment or commuting to work. Travel for other purposes is not provided or is provided only after all demand for trips for the priority purposes is satisfied. These restrictions or priorities do not apply to the general public's use of the recipient's regular service. The fourth criterion prohibits the establishment of such restrictions or priorities based on trip purpose.

One of the major inconveniences of using many existing demand-responsive systems is the long period of time that elapses between a request for service and the arrival of a vehicle. This waiting period—which can be 48 or 72 hours in some cases—is far longer than a member of the general public must wait for public transportation. The fifth

criterion would limit this waiting period to a "reasonable time." This reasonable advance notification time would be determined by the recipient, after obtaining the views of handicapped persons and their organizations through the public participation process. Since shorter response times cost the system more, the precise length of the maximum response time is one of the "trade-offs" that recipients and handicapped users should discuss as recipients establish their programs. The Department seeks comment on whether there should be a regulatory maximum waiting period and, if so, what it should be.

The sixth criterion prohibits the use of waiting lists. Some systems limit the availability of service to a certain number of users. All other eligible potential users are placed on a waiting list, and receive no service at all. This criterion would require the special service system to have sufficient capacity to serve all eligible users.

The context of this discussion of service criteria has been a special services system. However, the service criteria also apply to the other options recipients can choose. An accessible fixed route bus system, for example, would meet some criteria (e.g., comparable fares, no waiting lists) almost automatically. On the other hand, buses could be assigned to various routes and trips in a way that might not result in accessible service that covered the same service area as the recipient's service to the general public or operated during the same hours on all routes. Accessible buses could be scheduled on routes in a way that would result in long waiting periods for handicapped users (the waiting time criterion would refer to scheduling intervals rather than advance notification in an accessible bus system).

Accessible bus service would have to be designed to meet the criteria that were not met automatically, subject to the cost limit. The Department seeks comment on the relationship of the service criteria to accessible fixed route bus service, particularly with respect to the recipient's obligations in situations in which its accessible bus service (either before or after the 50 percent accessibility level were reached) did not meet all service criteria.

Section 27.77(d) Limitation on Costs to Recipients

In *APTA* v. *Lewis*, the Court while suggesting that the Department could require recipients to take modest affirmative steps to meet the needs of handicapped persons, said that the Department's 1979 rule exceeded the Department's authority under section 504. The primary reason for this conclusion was that the 1979 rule imposed, in the Court's view, extremely high financial burdens on recipients.

The Court relied on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, the Supreme Court also stated in this case that section 504 does not require modifications that would result in "undue financial and administrative burdens."

Paragraph (d) is intended to apply the principles stated in these cases to the Department's section 504 regulation. The paragraph is intended to ensure that compliance with the regulation does not necessitate fundamental alteration to recipients' programs or impose undue financial or administrative burdens. A fundamental alteration of recipients' programs, and the related undue finacial burdens, are not required to comply with the nondiscrimination mandate of section 504, the absence of a provision of this kind could cause the regulation or enforcement action under the regulation to be subject to successful legal challenge. Such a result, and the consequent uncertainty about the duties of recipients, would benefit no one.

It should be emphasized that this provision is not intended to judge the value of handicapped persons or weigh the cost of an accommodation to a recipient against the benefit to a handicapped person. The Department proposes this provision in recognition of the boundaries to the section 504 obligations of recipients articulated in the *Davis* and *APTA* cases. In the Department's view, it is a reasonable administrative mechanism for ensuring the recipients' obligations under the rule do not go beyond those boundaries.

The Department makes two alternative proposals for this cost limit. Both these proposals are based on a review by the Department of a special services program operated in Milwaukee, Wisconsin. The Department also looked at special service systems in other areas, and decided to use the Milwaukee system as a model because it appeared to meet many (though not all) of the service criteria proposed in the rule at a cost that did not impose an undue financial hardship. The percentages discussed in the two alternative cost limit proposals are approximately the percentages of UMTA assistance to Milwaukee and the Milwaukee transit provider's operating budget, repectively, expended on Milwaukee's special service system.

The Department recognizes that Malwaukees's experience may not necessarily be representative of that of other transit authorities. The cost of providing service in other cities could differ. The Department would like to receive comments and cost information from other areas in connection with establishing a cost limit that will be as widely applicable as possible. The Department believes that it is important to have as broad and deep a set of data as possible to help us make a decision on the appropriate cost limit (if this concept is retained for the final rule) and the relationship of expenditure levels to the adequacy of services. Consequently, we are interested in receiving as much comment and information as possible on this matter.

The first alternative is to limit each recipient's obligation to make expenditures in a given fiscal year to 7.1 percent of the annual average amount of Federal financial assistance it has received for mass transportation purposes over the current and the previous two fiscal years. By tying the cost limit to Federal financial assistance, this approach would respond to concerns about the equity of Federal requirements for expenditures that are not proportional to actual assistance received. This consideration may be especially important in light of current Federal budget limitations.

The second alternative is to limit a recipient's costs to 3.0 percent of the recipient's average operating budgets, from whatever source derived, over the current and previous two fiscal years. Since operating budgets may fluctuate less than Federal assistance, this approach might provide more stability in funding levels for the recipient's program of transportation services for handicapped persons.

In addition to soliciting comments on the relative merits of these two alternative approaches, we also request that commenters provide suggestions, based on their own experience if possible, of what an appropriate percentage level for either approach would be. We also seek suggestions for cost limit approaches other than the two set forth here. Combinations of cost limit approaches might also be possible (e.g., the greater, or lesser, amount derived by applying the two criteria discussed above).

The Department also seeks comments on whether greater specification of the bases (UMTA financial assistance, operating budget) from which the cost limits would be calculated would be desirable. For example, are there a standard set of items which should be

regarded as part of a recipient's operating budget? Are there some UMTA funding sources that should not go into the calculation? Should there be a specified way of handling unusual funding situations (e.g., and unusually heavy infusion of Federal funds connected with the construction of a new rail system) that could distort the funding base for transportation for handicapped persons?

The following example illustrates how the cost limit calculations would turn out, beginning with FY 1984. The table shows imaginary operating budget and DOT financial assistance figures for HATS. The right-hand columns show the HATS cost limits calculated according to Alternative 1 (7.1 percent of DOT financial assistance) and Alternative 2 (3.0 percent of operating budget).

Fiscal year	HATS operating budget (Million)	DOT financial assistance (Million)	Cost Limit	
			Alternative 1	Alternative 2
1982	$11	$4		
1983	12	4.5		
1984	13	5	319,500	360,000
1985	14	5.5	355,000	390,000
1986	15	6	390,500	420,000

The cost limits were calculated by averaging the operating budget or financial assistance figures for the fiscal year in question and the two previous fiscal years and taking the appropriate percentage of the result. For example, the alternative 2 cost limit for FY 1984 was 3.0 percent of $12 million, the average of the HATS operating budgets for FY 1982–1984.

In this example, the alternative 2 cost limit always turned out higher than the alternative 1 cost limit. This was because of the relationship between the hypothetical HATS operating budget and DOT assistance amounts. This relationship may not be at all typical of real transit authority situations (it is not the same as the situation in Milwaukee, for instance). The Department requests that recipients commenting on the proposed rule inform the Department of the relationship between the two figures in their cases.

The cost limits under either alternative would be higher in the example if one took the appropriate percentage of the operating budget or financial assistance for the current fiscal year alone, rather than of the average of the current fiscal year with the two previous fiscal years (though there are conceivable circumstances in which this would not be true). The averaging approach, however, allows for greater predictability and, particularly with respect to the Federal assistance approach, greater stability. The Department seeks comments from interested parties making detailed recommendations on how these caluclations can best be made.

Section 27.77(e) Eligible Project Expenses

Paragraph (e) describes the types of expenditures which may or may not be counted toward calculating the cost limit effort criterion. The eligible and ineligible expense categories are taken, with minor modifications, from Appendix A of the current interim final rule. The Department seeks comments on these eligible and ineligible expenses.

The Department calls the public's attention to three provisions of this paragraph in particular. Subparagraph (e)(1)(i) permits the recipient to count the incremental costs of operating accessible rolling stock. Subparagraph (e)(1)(iii) allows the incremental capital costs of accessible rolling stock. In most cases, the accessible rolling stock in question will be lift-equipped buses. However, for recipients who have accessible rail systems, the incremental costs of buying and operating accessible rail vehicles could also be counted. For purposes of this subparagraph, rail vehicles would not be regarded as accessible unless they formed part of an accessible rail system that handicapped persons could use. We emphasize that the allowable costs are the *incremental* costs of buying and operating accessible vehicles (i.e., the cost of equipping a bus with a lift, not the whole cost of the bus). Only costs which could be specifically identified and reasonably attributed to accessibility would be allowable.

Subparagraph (e)(2)(i) provides that the cost of constructing or modifying fixed facilities in order to comply with a requirement of the Department's regulation or a requirement unde the Architectural Barriers Act of 1968 are not eligible expenses, unless the construction or modification relates directly to the provision of transportation services that handicapped persons can use.

One difference between this paragraph and Appendix A results from the fact that Appendix A dealt with a minimum expenditure criterion. To meet this criterion, expenditures by parties other than the recipient could be counted. However, the purpose of the cost limit is to prevent the recipient itself from having to make unreasonably large expenditures. Therefore, only expenditures by the recipient itself count in calculating the cost limit.

Section 27.77(f) Provision of Service

Paragraph (f) is an important statement of the recipient's responsibility to provide actual transportation service to handicapped persons. To fulfill its committment to provide transportation service according to its program, the recipient cannot avoid its responsibility by planning service on paper and failing to provided it in the streets. If a recipient certifies that it has a program for providing transportation services, but does not maintain and deploy accessible vehicles, train drivers and other personnel, and administer its program (e.g., provide information and assistance to handicapped persons and establish usable means of communications with respect ot using the service) so that the service is actually provided as the program promises, then the recipient is not in compliance with this regulation. for example, a recipient that chose to comply with the regulation by making 50 percent of its buses accessible would not be in compliance with this paragraph if, after buying lift-equipped buses, it failed to maintain them in operating condition.

Section 27.77(g) Procedural requirements

Paragraph (g) sets forth several procedural requirements. One of these is that there be consultation with handicapped individuals and groups representing them as part of a public participation process for developing the program for transporting the handicapped persons. Handicapped people, public and private health and welfare agencies, and groups representing handicapped persons should be meaningfully involved in planning efforts to meet recipients' requirements under this proposed rule. Otherwise, effective project development is unlikely.

At least one public hearing would be required as part of this process. This public hearing would not necessarily need to be a special hearing called just to consider the recipient's program. As long as the concerns of the public

(especially handicapped persons) about the program could be fully addressed, the Department would not object to combining this hearing with any other timely UMTA-required hearing (e.g., the public comment and hearing process required under section 9(f) of the Urban Mass Transportation Act of 1964, as amended). In order to permit handicapped persons to participate as required by section 23.67 of the Department's existing section 54 regulation, recipients must schedule hearings in accessible facilities and publicized the hearings in a way to reach persons with hearing and vision impairments (e.g., large print notices, radio advertisements, etc. for visually impaired persons; notices sent to organizations representing or serving people with vision or hearing impairments). In addition, a sign language interpreter for hearing-impaired persons should be provided at a hearing if one has been requested or if it is reasonable to expect that hearing-impaired persons will attend.

In addition to the public hearing, there must be notice (again, a notice that reaches hearing and vision imaired persons) and an opportunity for written comment on the recipient's program proposal. Under the proposal, the public would be given 60 days to submit written comments on the recipient's proposed program. There would have to be at least 30 days advance notice of the public hearing, which would take place sometime during the second half of the 60-day public comment period. The local Metropolitan Planning Organization (MPO), where one exists, must also have the opportunity to comment on the proposed program.

One of the subjects which the Department believes it is relevant for transit authorities to discuss as part of the public participation process is the effect of changes in service patterns on handicapped or elderly users of existing service. For example, if a recipient which currently has a paratransit system decides to comply with this regulation by making 50 percent of its buses accessible, some current users of the paratransit system might have difficulty adapting to the new system. The recipient should seek ways of making the transition between the old and new service that would mitigate hardship to current users.

The recipient would be required to make efforts to accommodate, to the extent reasonable and consistent with overall program objectives, significant comments it receives from the MPO, the public, and handicapped persons and organizations representing handicapped persons. The recipient is not required to accommodate every comment, or even a majority of such comments. However, it is required to make available to the public a written explanation of its reasons for not accommodating comments. This is intended to ensure that recipients are responsive to significant comments, even those that they do not agree with. This "accommodate or explain" requirement parallels the obligation of Federal agencies, under Executive Order 12372, to respond to concerns from state and local governments on proposed Federal actions.

The recipient would have to complete its program planning process and submit required materials to UMTA within nine months after the effective date of a final regulation. The Department seeks comment on whether nine months is an appropriate length of time for the planning public participation process. There is no requirement that the recipient obtain prior approval of the program from UMTA; sending in the certification and program description are sufficient. After reviewing the description and certification, UMTA could, however, require changes to be made in the program. The agency could also reject the program as inconsistent with the requirements of this part.

UMTA would review recipients' submissions as expeditiously as possible, and would respond to recipients as soon as possible within the 90-day period if problems are discovered. Any certification that is not rejected or required to be changed within 90 days of its receipt by UMTA would be considered accepted. If the recipient did not hear from UMTA within this time, it could assume that UMTA had accepted the submission. The Administrator could extend this 90-day review period, if necessary. It is not intended that such an extension would be open-ended. The letter notifying the recipient of the extension—the purpose of which is simply to give the Administrator sufficient time to make a thorough evaluation of the recipient's program—would set a particular length of time (e.g., 30 additional days) for the extension. During any such extension, the recipient would not be subject to a finding of noncompliance based on the inadequacy of its program.

Subparagraph (g)(8) proposes that the recipient's program must actually go into effect (i.e., money must begin to be spent and transportation made available as provided in the program) on the first day of the fiscal year (the recipient's fiscal year, not the Federal fiscal year) next following the date on which the recipient's certification is due (i.e., a date nine months from the effective date of the final regulation). If the Administrator's 90-day (or extended) review period had not ended before the first day of the fiscal year in question, the recipient would not be required to begin implementing its program until the review period had ended.

This provision for the date on which the program actually goes into effect is proposed for two reasons. First, it gives recipients what should be an adequate start-up or transition period for its transportation service. Second, it avoids budgeting problems that recipients might have if they had to begin a new expenditure program in the middle of a fiscal year, particularly given the uncertainty that would result if the Administrator required changes in the recipient's program. Between the effective date of the regulation and the effective date of the recipient's program, the certification provided by the recipient under the present interim final rule (and the transportation provided by the recipient pursuant to the existing certification) would remain in effect.

The Department seeks comment on whether this method of determining the effective date is appropriate, or whether other alternatives would be better. We are interested in devising a provision that avoids undue delay for the beginning of service as well as budget and planning difficulties for recipients. For example, the Department might use the Federal fiscal year instead of the recipient's fiscal year to calculate the starting point, or determine that recipients should start to implement their programs a stated time after submission, even if that fell in the middle of a fiscal year.

The Department also generally seeks comments on ways of minimizing administrative burdens resulting from the statutorily-required public participation mechanism, particularly with respect to small entities.

Section 27.77(h) Monitoring of Program Implementation

This paragraph would require recipients to send UMTA an annual report detailing the services provided to handicapped persons under its program. The contents of the program are self-explanatory. UMTA would designate a date each year on which the report of a given recipient would be due. (The date would be the same each year for the recipient; however, the due dates would be staggered so that UMTA did not have to review all reports at the same time). This paragraph is intended to comply

with the monitoring requirement of section 317(c).

The annual report is intended to be a public document, which the recipient would make available to anyone who requested it. In addition, the Department seeks commments on whether the recipient should be required to seek and respond to comments concerning the annual report (a requirement analogous to the comment and response requirement for the recipient's original program submission).

Section 9 recipients are required to submit independently conducted annual audits. In addition, the Department must perform a full evaluation or review of section 9 recipient's programs every three years. The Department invites comment on whether it would be practical to combine this monitoring provision with these audit requirements, and, if so, how such a combined system would work. The Department also seeks comments on whether, when a recipient reports significant changes in its program as part of its annual report, it should also be required to submit a new certification pertaining to its altered program.

The Department generally seeks suggestions on ways of minimizing the administrative burdens involved in the statutorily required monitoring process, especially as regards smaller transit authorities and smaller local governments.

Section 27.77(i) Disparate Treatment

This paragraph is identical to section 27.77(c) of the existing interim final rule. It is intended to make explicit that this section does not permit the recipient to engage in disparate treatment to the disadvantage of a handicapped person with respect to transportation on the recipient's regular mass transit system. If a handicapped person is capable of using the recipient's regular service provided to the general public, then the transit operator cannot deny service to the handicapped person on the ground of handicap. This means, for example, that a recipient must permit a person using means of assistance such as guide dogs or crutches to use its vehicles and services.

Disparate treatment contrary to this paragraph is encompassed by § 27.7, the general nondiscrimination section of 49 CFR Part 27. However, under this proposal, a recipient's certification will constitute compliance with section 504 as it relates to the transportation of handicapped persons. Therefore, the Department believes that it is useful to make this prohibition specific, so that it is clear that, notwithstanding the certification, the recipient may not engage in disparate treatment.

Section 27.77(j) Noncompliance

This paragraph would make explicit the kinds of conduct that would place a recipient in jeopardy of enforcement action under Subpart F of 49 CFR Part 27. A recipient could be in noncompliance if it failed to make the appropriate certification under paragraph (a), had its certification rejected under paragraph (g) and did not correct the deficiencies that led to the rejection in a timely manner, failed to provide service as required by paragraph (f) or to put its program into effect in the time required by subparagraph (g)(8), failed to use public participation procedures required by paragraph (g), or failed to provide a report under paragraph (h). This list is not intended to be exhaustive or to limit the Department's discretion with respect to enforcement of section 504. For example, violation of the general requirements of Subparts A and B of Part 27 would also subject the recipient to the procedures of Subpart F.

Executive Orders 12250 and 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

Under Executive Order 12250, the Department of Justice is required to review Federal agency regulations implementing section 504. This NPRM has been reviewed and approved by the Department of Justice under this Executive Order.

Under the criteria of Executive Order 12291, this NPRM proposes a major rule. The Department has concluded that the proposal could have an annual cost impact exceeding $100 million. The Department has prepared a preliminary regulatory impact analysis to accompany this proposal, which is available for public review in the rulemaking docket. The proposal also constitutes a significant regulation under the Department to Transportation's Regulatory Policies and Procedures. This is the case both because of its cost impact and because it deals with subject matter that has always been controversial.

This proposal includes information collection requirements (the certification and program materials submission requirement of subparagraphs (g) (5) and (6) and the reporting requiremnent of paragraph (h)). The Office of Management and Budget must review and approve such requirements under the Paperwork Reduction Act. These provisions, if included in a final regulation, would not go in effect until approved by OMB.

The rule proposed by this notice could have a significant economic impact on a substantial number of small entities. That is, the proposed requirements could impose cost and administrative burdens on relatively small transit authorities, local governments, and businesses. The Department has consequently incorporated a preliminary regulatory flexibility analysis into its regulatory impact analysis. The Department seeks comments on ways of mitigating the potential effects of the proposed rule on small entities.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued at Washington, D.C., this first day of September, 1983

Jim Burnley,

Acting Secretary of Transportation.

PART 27—[AMENDED]

For the reasons set forth in the preamble, the Department of Transportation proposes to amend Part 27 of Title 49, Code of Federal Regulations, by revising § 27.77 thereof to read as follows:

§ 27.77 Urban mass transportation.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each recipent of Federal financial assistance from the Urban Mass Transportation Administration (UMTA) under sections 3, 5, 9, or 9A of the Urban Mass Transportation Act of 1964, as amended, shall certify that it has in effect a program for providing transportation services to handicapped and elderly persons. The certification shall state that the program meets all substantive and procedural requirements of this section.

(2) In lieu of certifying as required by paragraph (a)(1) of this Section, recipients who receive funds only under section 18 of the Urban Mass Transportation Act, as amended (small urban and rural transportation programs), shall certify to the FHWA Division Administrator through the designated section 18 state agency that special efforts are being made in their service areas to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use. This transportation service shall be reasonable in comparison to the service provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time. Recipients of section 18 funds who have already

provided such a certification are not required to recertify.

(3) Acceptance of the recipient's certification by the UMTA or FHWA Administrator, and compliance by the recipient with all other applicable requirements of this Part, shall be deemed by the Department to constitute compliance with section 504 of the Rehabilitation Act of 1973, sections 16 (a) and (c) of the Urban Mass Transportation Act, and section 165(b) of the Federal-aid Highway Act of 1973, insofar as these statutes relate to the provision of mass transportation services for handicapped persons.

(b) *Types of Service.* Subject to the cost limit of paragraph (d) of this section, each recipient's program shall provide for making transportation services meeting the service criteria of paragraph (c) of this section available to handicapped and elderly through one of the following methods:

(1) Making 50 percent of fixed route bus service accessible to handicapped and elderly persons. Fifty percent of fixed route bus service shall be deemed to be accessible when half the buses the recipient uses during both peak and non-peak hours are accessible.

(2) Providing paratransit or special services for handicapped and elderly persons. All handicapped and elderly persons in the recipient's service area who are unable, by reason or their handicap or age, to use the recipient's service for the general public shall be eligible to use the service; or

(3) Providing a mix of accessible fixed route service and paratransit or special services. All persons eligible to use a special services or paratransit system under paragraph (b)(2) of this section shall be eligible to use the special services or paratransit component of the mixed system.

(c) *Service Criteria.* The following minimum criteria for the provision of transportation services to handicapped and elderly individuals apply to any means of providing such services selected by the recipient under paragraph (b) of this section:

(1) The service shall be available throughout the same service area as the recipient's service for the general public.

(2) The service shall be available on the same days and during the same hours as the recipient's service for the general public.

(3) The cost of a trip on the service to each user shall be comparable to the cost of a trip of similar length, at a similar time of day, to a user of the recipient's service for the general public.

(4) Use of the service shall not be restricted by priorities or conditions related to trip purpose.

(5) Users of the service shall not be required to wait for the service more than a reasonable time.

(6) There shall not be a waiting list for the provision of service to eligible users.

(d) *Limitation on Costs to Recipients.* No recipient shall be required, in order to meet the requirements of paragraph (b), to expend in any fiscal year an amount exceeding [Alternative 1–7.1 percent of the average annual amount of Federal financial assistance for mass transportation it expects to receive over the current fiscal year and has received over the two previous two fiscal years] or [Alternative 2–3.0 percent of the average of the recipient's operating budgets for the current fiscal year and the previous two fiscal years]

(e) *Eligible Project Expenses.* (1) Project expenses eligible to be counted in determining whether a recipient has reached the cost limitation of paragraph (d) of this section include the following:

(i) Payment of current incremental operating costs for accessible rolling stock;

(ii) Operating costs of special service system;

(iii) Capital costs for special services systems components, incremental capital costs of acquiring accessible rolling stock;

(iv) Payment of expenses of indirect methods of providing services;

(v) Administrative costs directly attributable to coordinating services (including those receiving funds under the UMTA section 16(b)(2) program) for handicapped persons;

(vi) Incremental costs directly attributable to training the recipient's personnel to provide services to handicapped persons;

(2) Project expenses ineligible to be counted in determining whether the cost limit of paragraph (d) of this section has been reached include the following:

(i) Costs of construction of or structural changes to fixed facilities required by the Architectural Barriers Act of 1968 that do not directly relate to the actual provision of transportation service that handicapped persons can use, as required by this section and set forth in the recipient's program; and

(ii) Administrative costs of compliance with this Part not specifically allowed by paragraph (e)(1) of this section.

(3) With respect to transportation that serves both handicapped persons and other persons, only that part of the service that serves handicapped persons may be counted toward eligible project expenses for purposes of this section.

(f) *Provision of Service.* Each recipient shall ensure that service is provided to handicapped and elderly persons as set forth in the recipient's program. The recipient shall ensure that equipment is maintained, personnel are properly trained and supervised, and program administration is carried out in a manner that does not permit actual service to handicapped and elderly persons to fall below the level set forth in the recipient's program.

(g) Procedural Requirements (1) The recipient shall develop the program required by this section through a public participation process that includes consultation with handicapped individuals and/or groups representing them, an opportunity for written public comment, and at least one public hearing. Any subsequent significant changes to the program shall also be developed through such a public participation process.

(2) The recipient's public participation process shall include a period of at least 60 days for comment on the recipient's proposed program for providing transportation services to handicapped and elderly persons. The public hearing shall take place during this comment period, and notice of the hearing shall be given at least 30 days before the date of the hearing. All notices and materials pertaining to the proposed program, comment period, and public hearing shall be made available by means that will reach persons with hearing and vision impairments.

(3) The recipient shall also submit its proposed program to the local metropolitan planning organization (MPO), if any, for comment.

(4) The recipient shall make efforts to accommodate significant comments from the MPO and the public (including handicapped individuals and groups representing handicapped individuals). With respect to such comments that the recipient did not accommodate, the recipient shall make available to the public a written statement of its reasons for not accommodating them. The program and associated materials, including comments and recommendations from the MPO and the public, a transcript of the hearing, and the recipient's explanation of instances of non-accommodation, shall be kept available to the public for review for three years.

(5) The recipient shall submit copies of the following materials to the UMTA Administrator at the time it submits its certification:

(i) A copy of its program;

(ii) The recipient's projected cost limit for the first fiscal year in which the program will be in effect and the amount of funds the recipient will expend to implement the program in that year;

(iii) The comments of the public (including handicapped persons and groups representing them) and the MPO on the recipient's program, or a summary of these comments; and

(iv) The recipient's responses to these comments, or a summary of the recipient's responses.

(6) The recipient shall complete the program planning process and submit its certification and program materials to the UMTA Administrator by [a date nine months from the effective date of the revised regulation].

(7) Based on the information contained in the program materials and other relevant information gathered by the Administrator, the Administrator may reject the certification or require the recipient to make changes in its program. Any certification that the Administrator does not reject or require to be changed within 90 days of its receipt is deemed to be accepted. The Administrator may, at his or her discretion, extend this review period for a reasonable time.

(8) The recipient's program shall go into effect no later than the first day of the next fiscal year of the recipient which begins after the date the recipient is required to submit its certification to the Administrator. Provided, that in no case shall a recipient's program be required to go into effect before the conclusion of the review period established by paragraph (g)(7) of this section. In the interim between the effective date of this section and the date the recipient's program goes into effect, the certification submitted by the recipient in response to the Department's July 20, 1981 interim final rule (46 FR 34788) shall remain in effect.

(h) *Monitoring of Program Implementation.* Each recipient shall send an annual report to the UMTA Administrator on or before a date designated for the recipient by the Administrator. The report, which shall be available to the public, shall contain the following information:

(1) A description of the transportation services provided to handicapped persons in the year covered by the report, with specific reference to the service criteria listed in paragraph (c) of this section;

(2) If the recipient was unable to meet all the service criteria listed in paragraph (c) of this section because doing so would cause the recipient to exceed the cost limitation of paragraph (d) of this section, the recipient's cost limit and a summarized account of the recipient's eligible project expenses;

(3) If the recipient has not attained the level of service which its program ultimately projects, the recipient's progress toward that level during the completed reporting year and an estimate of the progress expected to be made toward that level during the next reporting year;

(4) Any significant changes in the program made during the completed reporting year; and

(5) A description of any significant changes in the transportation service provided to handicapped persons or the resources available for such services expected in the next reporting year.

(i) *Disparate Treatment.* Notwithstanding the recipient's certification under paragraph (a) of this section, the recipient shall not on the basis of handicap deny transportation service on the recipient's system of mass transportation for the general public to any handicapped person capable of using such service, or otherwise discriminate against such person in connection with such service.

(j) *Noncompliance.* The following conduct on the part of a recipient constitutes noncompliance with this section and makes the recipient liable to enforcement action under Subpart F of this Part. This list of noncomplying conduct is not necessarily exhaustive.

(1) Failure to make a certification required by paragraph (a) of this section in the time provided in paragraph (g)(6);

(2) After rejection of a certification by the UMTA Administrator under paragraph (g)(7), failure to correct in a timely manner the deficiencies that resulted in the rejection, sufficient to allow the Adminstrator to accept the certification;

(3) Failure to put the program into effect at the time required by paragraph (g)(8);

(4) Failure to provide service as required by paragraph (f) of this section

(5) Failure to follow public participation procedures set forth in paragraphs (g) (1)–(4); and

(6) Failure to provide program materials required by paragraphs (g)(5)–(6) or reports required by paragraph (h) of this section at the times required by paragraphs (g) and (h) of this section, respectively.

(Sec 504 of the Rehabilitation Act of 1973; 29 U.S.C. 794; Sec. 317(c) of the Surface Transportation Act of 1982; 49 U.S.C 1612(c))

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